

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 21 2008

MOLLY DWYER, ACTING CLERK
U.S. COURT OF APPEALS

JOEL ARMANDO BARRETO-
NAVARRO,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 04-73529

Agency No. A72-902-872

MEMORANDUM *

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted March 18, 2008 **

Before: CANBY, T.G. NELSON, and BEA, Circuit Judges.

Joel Armando Barreto-Navarro, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") decision dismissing his

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

appeal from an immigration judge's decision finding him inadmissible and premitting his application for adjustment of status. We retain jurisdiction under 8 U.S.C. §1252(a)(2)(D) to resolve questions of law, and we review these questions de novo. *De Jesus Melendez v. Gonzales*, 503 F.3d 1019, 1023 (9th Cir. 2007). We deny the petition for review.

The BIA correctly found Barreto-Navarro inadmissible based on his 1997 conviction for possession of cocaine under California Health & Safety Code § 11350(a). *See* 8 U.S.C. § 1182(a)(2)(A)(i)(II). Although his 1997 conviction was expunged, it retains immigration consequences because he had benefitted from California's pretrial diversion program for his 1992 controlled substance offense. *See De Jesus Melendez*, 503 F.3d at 1020 (alien may not avoid the immigration consequences of a drug conviction as a "first offender" when he was granted "pretrial diversion" for a prior offense under a state rehabilitation scheme that did not require him to plead guilty).

PETITION FOR REVIEW DENIED.